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IN THE

Supreme Court of the United States

OCTOBER TERM, 1944.

No. 1194

JOHN C. BLACK,

Petitioner,

vs.

RICHFIELD OIL CORPORATION,

Respondent.

Respondent's Brief in Opposition to the Petition for Writ of Certiorari.

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Respondent's Brief in Opposition to the Petition for Writ of Certiorari.

Decisions Below.

This case is before the Court on Petition for a Writ of Certiorari to the United States Circuit Court of Appeals for the Ninth Circuit, to review a decree of the Circuit Court of Appeals [R. 1837], affirming a judgment [R. 184-185], entered by the District Court for the Southern District of California, dismissing the first and second causes of action of the Complaint herein, the third cause of action being dismissed by stipulation without prejudice.

The District Court rendered a written opinion [R. 152-172], which is reported in 41 Fed. Supp. 988. The opinion of the Circuit Court of Appeals, with a dissent-

ing opinion* [R. 1823-1836] is reported in 146 Fed. (2d) 801.

We submit that this case presents no reason or ground for the grant of a Writ of Certiorari such as required by Rule 38, sub-division 5, of this Court.

Each of the questions presented by Petitioner is disposed of on its merits in the opinions of the District Court and the Circuit Court of Appeals. It is not true as Petitioner contends that the decisions below conflict with the decision of any other Circuit Court of Appeals with respect to the effect or interpretation of Section 77B of the National Bankruptcy Act, or are opposed to the law of the State of California.

We re-state the case only insofar as is necessary to correct the inaccuracies or omissions in Petitioner's statement.

Statement of the Case.

This is an action for royalties allegedly due under a License Agreement [R. 1068-1073], which was entered into under date of September 15, 1925, between Petitioner and Pan-American Petroleum Company. Respondent acquired this contract along with the properties of the original licensee, Pan-American Petroleum Company, by transfer on March 12, 1937 [Exhibit 32 to the Stipulation; physical Exhibit 55] pursuant to a plan of reorganization of Pan-American Petroleum Company, under the then Section 77B of the National Bankruptcy

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*The dissenting opinion of Circuit Judge Stephens is limited to the ruling on the first cause of action.

Act, (11 U. S. C. A. 207), which plan was confirmed by the Court below December 23, 1936 [Exhibit 20 to physical Exhibit 55.]

By the action, Petitioner has sought to require Respondent to pay royalties under the License Agreement because chromium alloy (stainless steel) has been used in the cracking tubes installed in a new cracking plant built by Respondent since acquiring the license agreement. Such use of chromium alloy cracking tubes is purported to be covered by Patent No. 2,075,164, granted March 30, 1937, upon an application Serial No. 599,403, filed on March 6, 1922, by Petitioner. Respondent does not deny the use in its new cracking plant of chromium alloy cracking tubes, but it does deny that it is obligated under the license agreement to pay royalties for such use. The inventions for the use of which royalties are payable under the license agreement are expressly limited in the license agreement by reference to the numbers of three issued patents and the serial numbers of ten applications for patent of Petitioner pending at the date of the license agreement.* Application Serial No. 599,403, upon which Patent No. 2,075,164 was granted is not enumerated or referred to in the license agreement.

Three causes of action are separately stated in the complaint [R. 2-25]. By the first cause of action and the first paragraph of the prayer, Petitioner sought to have the language of the license agreement interpreted

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*Royalties are payable only "upon the gasoline extracted by means of the processes for the extraction of synthetic gasoline" [R. 1070-1072], and these are defined [R. 1069, lines 15-18] by reference to the enumerated patents and applications "for full particulars with respect to the nature and character" thereof.

so as to obligate Respondent to pay royalties for the use of Patent No. 2,075,164. By the second cause of action, Petitioner sought reformation of the license agreement so as to physically add thereto Application Serial No. 599,403 upon which Patent No. 2,075,164 issued. By the third cause of action, Petitioner sought to recover the same royalties for the alleged use of other patents.

The case was tried below only upon the first and second causes of action. Subsequent to the decision of the District Court, and before the appeal, the third cause of action was dismissed by Petitioner without prejudice. The first cause of action was dismissed by the District Court on the ground that the language of the license agreement was clear and certain in its identification of the subject matter, and that the case involves not an ambiguity but simply an omission. The Court applied Section 1858 of the California Code of Civil Procedure, which specifies that in the construction of an instrument, the Judge may not "insert what has been omitted." The second cause of action was dismissed by the District Court on the grounds that: (a) Respondent had acquired the license agreement in good faith and for value, and that reformation would operate to the prejudice of rights thus obtained and was prohibited by Section 3399 of the Civil Code of California; (b) that Respondent had assumed the contract as written but not as petitioner seeks to have it re-formed; and (c) that Petitioner's failure to file any claim in the 77B proceeding now forecloses him from asserting a right to re-form the contract.

Argument.

I.

The decision upon the first cause of action presents no reason or ground for the grant of a Writ of Certiorari. Both the District Court [R. 167] and the Circuit Court of Appeals [R. 1830-1831], one Judge dissenting, have found that the writing of the license agreement is clear and certain in its identification of the subject matter. The Circuit Court of Appeals disposed of the arguments advanced by Petitioner in his endeavor to assert the contrary, as follows:

> "The arguments are but variations of a single theme, namely, that the instrument contains language indicative of a purpose to license a class of inventions rather than to limit the grant to those designated by patent and application numbers. We think otherwise."

Such concurrent findings will not be reviewed on *certiorari*. (*General Talking Pictures Corp. v. Western Electric Co.*, 304 U. S. 175, 178; 82 L. Ed. 1273-75.)

The applicability of the parol evidence rule in this case is controlled by the law of the State of California. (*Ruhlin, et al. v. New York Life Ins. Co.*, 304 U. S. 202; *Erie Railroad Co. v. Tompkins*, 304 U. S. 64.)

The Courts below expressly applied the California law. The California decisions cited by the District Court [R. 165-166] and the Circuit Court of Appeals [R. 1832] clearly support the rulings below. The assertion that the California law was not properly applied is not a ground for *certiorari*. (*Ex Parte Woods*, 143 U. S. 202; 36 L. Ed. 125, 126.)

II.

Any one of the three grounds upon which the Courts below dismissed the second cause of action is sufficient to sustain the judgment.

(a) Both the District Court [R. 168-169] and the Circuit Court of Appeals [R. 1834] have ruled that Respondent acquired the License Agreement in issue in good faith and for value*, and have ruled that a reformation of the License Agreement in Respondent's hands is barred by Section 3399 of the Civil Code of California, which provides:

> "When, through fraud or a mutual mistake of the parties, or a mistake of one party, which the other at the time knew or suspected, a written contract does not truly express the intention of the parties, it may be revised, on the application of a party aggrieved, so as to express that intention, so far as it can be done without prejudice to rights acquired by third persons, in good faith and for value."

The decisions of the Appellate Courts in California, applying this Code Section, clearly rule that a contract cannot be reformed against bona fide purchasers for a valuable consideration without notice. (*Sherwood v.*

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*Contrary to Petitioner's argument that Respondent is merely the rehabilitated debtor, the District Court found that Respondent is a newly organized third party. The District Court adopted the following conclusion of law: "(9) Defendant was not a party to the licensing agreement in litigation. It is an innocent third party, and purchased the assets and properties of the Debtor, Richfield Oil Company of California, and its subsidiary, Pan-American Petroleum Company, in good faith and for value within the meaning of Section 3399 of the California Civil Code." [R. 183.]

Robertson, 48 Cal. App. 208, 191 Pac. 972; *West Coast Lumber Co. v. Apfield,* 86 Cal. 335, 24 Pac. 993; *United States v. Payson,* Fed. Cas. 16016 (N. D. Calif.)).

Petitioner's argument that Respondent stands here in the shoes of the debtor's trustee and is charged with any failure of the trustee to inquire is manifestly unsound. The rulings of the Courts below are not based upon any lack of knowledge of the trustee. Both Courts below found that there is nothing in the record to support an inference that Respondent had notice of the asserted undisclosed obligation now sought to be imposed upon it by reformation. [R. 1834.] Respondent cannot be charged with any failure of the trustee. Sub-division (h) of Section 77B of the Bankruptcy Act expressly provides for the discharge of all claims and obligations of the former owner of such property, and for the transfer of such property "free and clear of all claims of the debtor, its stockholders and creditors, except such as may consistently with the provisions of the plan be reserved in the order confirming the plan or directing such transfer and conveyance or retention * * *."

In applying the doctrine of innocent purchaser for the protection of Respondent, the Court below did equity. Petitioner's effort to bring about a reformation of the License Agreement in the hands of Respondent has no appeal to a Court of equity under the circumstances here. The omission of Application Serial No. 599,403 from the License Agreement according to Petitioner's own testi-

mony was entirely due to Petitioner's own fault. [F. F. #5; R. 179.] It is the law of California that a party may not obtain reformation of a contract to correct his own negligent mistake.

California Trust Co. v. Cohn, 214 Cal. 619, 2 Pac. (2d) 297;

Burt v. Los Angeles Olive Growers Assn., 175 Cal. 668, 166 Pac. 993;

Fraters Glass & Paint Co. v. Southwestern Construction Co., 107 Cal. App. 1, 290 Pac. 45;

Taff v. Atlas Assur. Co., 58 Cal. App. (2d) 696, 137 Pac. (2d) 483.

Furthermore, Petitioner was plainly guilty of laches in failing from the writing of the instrument in 1925 until after the transfer to Respondent in 1937, to ascertain the omission of Application Serial No. 599,403, and in not moving to have the License Agreement re-formed. Less than three months after the making of the License Agreement, Petitioner executed instruments agreeing to transfer his patent and patent application to Gasoline Products Company. In these instruments Application Serial No. 599,403 is expressly enumerated. [R. 1485-91.] The Court below found that these recitals were sufficient to put Petitioner on notice that he had failed to include Application Serial No. 599,403 in the License Agreement in issue here. [Finding of Fact No. 7; R. 174.] It is the law of California that laches is a bar to reformation of a written instrument.

Barfield v. Price, 40 Cal. 535;

Bradbury v. Higginson, 167 Cal. 553, 140 Pac. 254;

Garstang v. Skinner, 165 Cal. 721, 134 Pac. 329;

Wills v. Porter, 132 Cal. 516, 64 Pac. 896;

Burkle v. Levy, 70 Cal. 250, 11 Pac. 643;

Miller v. Lantz, 9 Cal. (2d) 544, 71 Pac. (2d) 585;

Goodfellow v. Barritt, 130 Cal. App. 548, 30 Pac. (2d) 740;

Wilson v. Cooper, 126 Cal. App. 607, 15 Pac. (2d) 174.

(b) Both the District Court [R. 170-171] and the Circuit Court of Appeals [R. 1835] have found that Respondent has assumed the License Agreement as written but not as petitioner seeks to have it re-formed. Under the law of California, the assignment of the License Agreement to Respondent does not cast upon Respondent any of the obligations imposed by the License Agreement upon the original licensee unless Respondent has assumed the performance of such obligations.

Lisenby v. Newton, 120 Cal. 57, 52 Pac. 813;

Bryant v. Smith, 57 Cal. App. 214, 206 Pac. 1025;

Armstrong Co. v. The Shell Co. of Calif., 98 Cal. App. 769, 277 Pac. 887;

25 *Cal. Jur.*, 701.

Petitioner's argument that because Respondent assumed the liabilities and obligations of the receiver and trustee under the License Agreement that Petitioner thereby holds the License Agreement exactly as did the bankrupt is manifestly erroneous and ignores entirely the effect of Section 77B of the Bankruptcy Act. The trustee and receiver never assumed the obligation sought to be added to

the License Agreement by reformation. The License Agreement was never specifically affirmed by the receiver or trustee but the receiver and trustee did continue the payment of royalties during the re-organization proceedings. The District Court held that the payment of these royalties constituted an affirmance or adoption of the License Agreement, but only to the extent of the terms of the Licensing Agreement appearing on the face of the contract. [Conclusion No. 5; R. 182.]

To hold that the receiver or trustee because of the payment of royalties was bound to perform an obligation which might have been added to the contract by reformation and of which he had no knowledge would be to deprive the receiver or trustee, as well as the Court, of the right as well as the duty, to disaffirm a burdensome contract in the course of the re-organization proceedings. It is fundamental that one of the first duties of a receiver is to determine which of the contracts of the corporation he will affirm or adopt, and which of the contracts he will disaffirm or reject. If there are any additional obligations of the contract which are not disclosed on the face of the contract, the receiver or trustee, if he has no knowledge of such additional burdens or obligations, cannot be held to have affirmed any such additional burdens or obligations merely by performing the obligations which appeared on the face of the contract. If this were not true, and if mere performance were held to have the effect of affirming additional unknown obligations as well as the known obligations, the receiver or trustee would be deprived of his power and duty to disaffirm and reject a burdensome contract. Furthermore, a premium and advantage would be given to the inactivity of the other party to the contract

in not making known his assertion of such additional obligations to the prejudice of all other creditors of the estate who are required to accept pro rata distribution on their claims against the estate in lieu of performance and satisfaction; and consequently, the entire purpose and effect of the administration of estates in equity receivership and under Section 77B of the Bankruptcy Act would be abrogated.

(c) Both the District Court [R. 169-171] and the Circuit Court of Appeals [R. 1835-1836] have ruled that Petitioner is foreclosed from reformation of the License Agreement because no claim for such reformation was filed in the re-organization proceedings. These rulings are clearly in accord with the wording and intent of Section 77B of the Bankruptcy Act. That statute provides in subdivision (g) that an order of confirmation shall be binding upon "all creditors, secured or unsecured, whether or not affected by the plan, and whether or not their claims shall have been filed, and, if filed, whether or not approved, including creditors who have not, as well as those who have, accepted it." It further provides in subdivision (h) that "the property dealt with by the plan, when transferred and conveyed by the trustee or trustees to the debtor or the other corporation, or corporations, provided for by the plan * * * shall be free and clear of all claims of the debtor, its stock-holders and creditors, except such as may consistently with the provisions of the plan be reserved in the order confirming the plan or directing such transfer and conveyance or retention * * *." The Act defines the term "creditors" in subdivision (b) as including "all holders of claims of whatever character against the debtor or its property, including claims under

executory contracts, whether or not such claims would otherwise constitute provable claims under this Act," and defines the term "claims" as including "debts, securities, other than stock, liens, or other interests of whatever character."

The re-organization proceedings involving Richfield Oil Company of California and its subsidiary, Pan-American Petroleum Company, are set forth in the Stipulation, Exhibit 55. This Stipulation is not reproduced in the printed record, but is a physical Exhibit in this case. The petition for the re-organization of Richfield Oil Company of California and its subsidiary, Pan-American Petroleum Company, under Section 77B of the National Bankruptcy Act, was filed October 8, 1936. On that date an order was entered by the District Court "that all claims and interests of creditors and stockholders" should be filed with the trustee on or before November 7, 1936, and that "any and all such claims or interests not filed or evidenced on or before said date shall be forever barred." [Exhibit 14 to Exhibit 55.] An order confirming the plan of re-organization was made on December 23, 1936, and provided that:

> "The property of the subsidiary * * * when transferred and conveyed by the trustee of the subsidiary to the new company, as hereinafter directed, shall be free and clear of all claims and liens, except such as are reserved in the plan * * *."

and further provided that:

> "The provisions of the plan and of this order shall henceforth be binding upon the debtor, * * * and shall be binding upon all creditors of the subsidiary, secured or unsecured, whether or not affected by the plan, and whether or not their claims have been filed in these proceedings * * *."

The order of confirmation contained an injunction, restraining "all creditors and stockholders of the subsidiary * * * from prosecuting against the new company * * * any suit or proceeding arising out of or based on any obligation or any liability of, or interest in, the * * * subsidiary * * * or in respect of any claim against, or interest in the subsidiary * * *." Following the confirmation of the plan, on June, 1937, a final order and decree was entered by the District Court terminating the bankruptcy proceedings and discharging the trustee. [Exhibit 22 to Exhibit 55.] This final decree reiterated the discharge and injunction.

Petitioner had due notice of these proceedings and he did not file in such proceedings any claim with respect to the License Agreement in issue, and particularly any claim for reformation thereof to add Application Serial No. 599,403. [Paragraph 9 of Exhibit 55.] Petitioner did, however, participate in the reorganization proceedings, and filed a claim covering a payroll deduction, which claim was allowed, and pursuant to which he received a portion of the proceeds under the plan of re-organization.

That a claim for reformation of an executory contract, such as involved here, should be foreclosed if not filed and presented in the re-organization proceedings is apparent upon consideration of the effect upon innocent parties of the failure to so hold. Pursuant to the plan of re-organization, there was transferred to Respondent all of the properties, assets and business of the debtor, Richfield Oil Company of California and its subsidiary, Pan-American

Petroleum Company, as well as the properties, assets and business (with certain exceptions) of a third corporation, Rio Grande Oil Company. In consideration for the assets so transferred, Respondent issued to the trustee of such companies a certificate representing two million shares of the common stock for distribution to the holders of allowed, secured or unsecured, claims in the re-organization proceedings of Richfield Oil Company of California and of Pan-American Petroleum Company. In consideration for the assets so transferred by the Rio Grande Oil Company, Respondent issued to the Rio Grande Oil Company 865,000 shares of its common stock and 500,000 warrants. [Paragraphs 12 and 13, Exhibit 55.] As a part of the plan of re-organization, Respondent obtained new capital in the sum of $20,000,000.00 for use in rehabilitating the properties and carrying on the business so acquired under the re-organization proceedings.

It is entirely clear that the failure of Petitioner to file a claim for reformation of the License Agreement in the re-organization proceedings should foreclose Petitioner from here asserting such a claim against Respondent. As said by the Circuit Court of Appeals:

> "Sub-division (h) of Section 77B provides that when the property dealt with is transferred to a corporation provided for in the plan, it shall be free and clear of all claims of the debtor, its stockholders and creditors, except such as may consistently be reserved in the order of confirmation. It is not contended that the order in terms reserved the right to

reform this contract. Obviously reformation at this juncture would place appellant in a preferred position, prejudicial to the rights not only of other creditors of the old Richfield Company but to the rights of those who supplied the very large amount of working capital requisite to the operations of the new." [R. 1836.]

The rulings of the courts below that Petitioner's claim for reformation was foreclosed by the failure to file any claim for such reformation in the re-organization proceedings is not in conflict with the decisions relied upon by Petitioner. The case of *Consolidated Gas, Electric L. & P. Co. v. United Railways*, 85 Fed. (2d) 799 (C. C. A. 4) merely holds that a claim for damages for rejection of an executory contract does not arise within the meaning of the Bankruptcy Act until the contract has been rejected by the trustee.* Manifestly this must be so because prior to the rejection of the contract no such claim would exist. Such holding is not in point here. As said by the Circuit Court of Appeals below, "The decision is not helpful." [R. 1835.] The case of *In Re United Cigar Stores Co. of America*, 89 Fed. (2d) 3 (C. C. A. 2) merely holds that an unexpired lease will serve as a basis for a claim for damages under Section 77B of the Bankruptcy Act if rejected by the Trustee in Bankruptcy.

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*The court there was not speaking of any other type of claim which might have arisen under the contract as shown by the fact, in the court's opinion, that other claims had been filed and allowed under the same contract.

There is nothing in this case to support Petitioner. The case of *Mohonk Realty Corporation v. Wise Shoe Stores, Inc.*, 111 Fed. (2d) 287 (C. C. A. 2) does not support Petitioner's contention. While holding that a landlord may not be a creditor with a provable claim until his lease is rejected, the case holds that the landlord must appear at the re-organization hearing, or before, and there insist that his lease be either rejected or affirmed. The case of *Arkansas Fuel Oil Co. v. Pace*, 203 Ark. 52, 155 S. W. (2d) 886, while holding that the executory contract remains in full force in a proceeding under Section 77B until it is rejected, and unless rejected passes to the re-organized corporation is not concerned with the failure to assert a claim during the bankruptcy proceedings.

None of these cases is authority for Petitioner's contention that a cause of action existing under a contract at the time of a re-organization proceeding need not be filed in the re-organization proceeding merely because the contract is not rejected. The cause of action for reformation upon which Petitioner depends if it ever existed, existed at all times during the receivership and the bankruptcy proceedings. In ruling that such a claim must have been presented in the re-organization proceedings, the courts below have manifestly correctly applied the plain mandate of Section 77B of the Bankruptcy Act.

Conclusion.

We submit that this case does not present any sufficient reason for the grant of a Writ of Certiorari within the rulings and practice of this court. The case involves merely the application of established rules of law and the Bankruptcy Statute to the particular facts of this case. There is no basis for Petitioner's assertion that the decision is in conflict with the California law, or with any decision involving the Bankruptcy Statute.

Respectfully submitted,

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